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September 30, 2014					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 1946 (F)

SMARTSTONE PRIVATE LIMITED

v.

**GENERAL NOLI USA, INC. and
SAVINO DEL BENE FREIGHT FORWARDERS (INDIA) PVT LTD**

INITIAL ORDER

On August 5, 2014, the Commission received complainant Smartstone Private Limited's initial filing. On August 8, 2014, the Office of the Secretary docketed the filing as an informal complaint pursuant to 46 C.F.R. Subpart S. On August 13, 2014, the Settlement Officer to whom the complaint was assigned served the informal complaint and the Notice of Filing and Assignment on respondents General Noli USA, Inc. and Savino Del Bene Freight Forwarders (India) Pvt Ltd. On September 22, 2014, Respondents filed their objection to proceeding under Subpart S; therefore, the claim is considered to be a formal complaint under 46 C.F.R. § 502.311 and will be adjudicated pursuant to 46 C.F.R. Subpart T.

To prevail in a proceeding brought to enforce the Shipping Act, a complainant has the burden of proving by a preponderance of the evidence that the respondent violated the Act. 5 U.S.C. § 556(d) ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."); 46 C.F.R. § 502.155; *Exclusive Tug Franchises*, 29 S.R.R. 718, 718-19 (ALJ 2001).


The Commission's rules governing discovery are not applicable to proceedings under Subpart T; therefore, there is no formal discovery in this proceeding. While there is no formal discovery, the parties are urged to cooperate and voluntarily produce information requested by other parties. The parties shall submit a joint status report on or before October 30, 2014, summarizing their progress.

The Rules do provide that the “administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent.” 46 C.F.R. § 502.314. Accordingly, if a party is unable to obtain information from another party by voluntary means, on or before October 30, 2014, the party seeking the information may file a motion requesting that the administrative law judge require submission of the information pursuant to Rule 314. The motion shall explain why the information is relevant to this proceeding, what attempts have been made to obtain the information voluntarily, and why the information cannot be obtained in some other manner.

A motion for additional information shall be served by email on the other parties. A party opposing the motion shall serve and file its response within ten business days of service of the motion. A motion or opposition should be filed with the Commission pursuant to Rule 320, 46 C.F.R. § 502.320. In addition, the filing party shall send the document electronically to the Commission at the following email addresses: secretary@fmc.gov and judges@fmc.gov. Neither the motion nor the opposition may exceed ten pages, excluding exhibits or appendices, without leave of the presiding officer.

The Respondents have requested an oral hearing. That request is denied at this time. In the status report due on October 30, 2014, the parties shall address whether they believe an oral hearing in Washington, DC, is necessary and how long it would take. Generally, Subpart T proceedings are decided without an oral hearing and the undersigned will make the final determination regarding whether an oral hearing will be held.

The parties shall discuss with each other whether settlement is possible. The joint status report due on October 30, 2014, should not go into details regarding settlement negotiations but should indicate whether or not settlement was discussed. In addition, the parties may raise any issues that need to be resolved prior to issuing a briefing schedule.


Erin M. Wirth
Administrative Law Judge